



# Stream and Wetland Protection in California: Water Board Regulatory Programs

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Central Coast Water Board, San Luis Obispo

# Objectives of Training

- Review Water Board Functions
- Provide County staff with insight into Water Board permit process
- Promote better coordination between the County and Water Board

# 401 Cert/Stream and Wetland Protection Program Central Coast Water Board

## History:

- Distributed to Permit Writers, Students
- No formal training
- Fall 2006 More resources: 1.1 PY (FTE), Student Funding Augmented
- Consolidate 401 Cert under one staff
- Align Program with our Vision of Healthy Watersheds

# 401 Cert/Stream and Wetland Protection Program at Central Coast Water Board

- Assigned to Stormwater Staff, 1 Student
- Assist from Enforcement Staff, Staff Oceanographer (Peter von Langen)
- Phil Hammer, Kim Sanders, Tamara Presser, David Innis, Laura Cremer



# The Goal of Post-Construction Storm Water Management is to Ensure that New and Redevelopment Promotes the Desired Conditions of Healthy Watersheds







What happens to  
Hydrologic Processes?



Detention  
basins

Watsonville



# Potential Improvements to State Approach

- SWRCB: Wetland and Riparian Policy Pending
- Central Coast Water Board considering Basin Plan Amendments for Healthy Aquatic Habitat



# County Roles

- Co-Regulator on Development Projects
- Permit Applicant
  - PW maintains 210 major stream crossings
  - Including 130 federal bridges
  - Miles of country roads parallel to streams
  - Flood Control Infrastructure O&M, expansion

# Water Board Regulations for Stream and Wetland Protection

- Federal 401 and State Permits & Prohibitions
- Determined by status of waters:

Waters of the State: any surface water or groundwater, including saline waters, within the boundaries of the state.

Examples include: rivers, streams, lakes, bays, marshes, mudflats, diked baylands, sloughs,

- unvegetated seasonally ponded areas
- drainage swales
- wet meadows
- natural ponds
- vernal pools
- seasonal wetlands
- riparian woodlands

# Regs for Non-Jurisdictional Waters

- General and Individual Waste Discharge Requirements (WDRs)
- General State Board-issued WDR for non-jurisdictional waters
- Regional Board WDRs for dredging Morro Bay and Port San Luis



# Regs for US Waters: 401 Cert

- No waivers No more
- Any federal permit for fill discharge to US Waters
- Provides State a way to ensure all water quality regulations are followed
- State's conditions become a part of the Fed's permit
- Address all impacts from construction and operation of project; not just point source discharge

# “I hereby issue an order...”

Certifying that any discharge from the Project shall comply with the applicable provisions of CWA sections:

301 ("Effluent Limitations")

302 ("Water Quality Related Effluent Limitations")

303 ("Water Quality Standards and Implementation Plans")

306 ("National Standards of Performance"), and

307 ("Toxic and Pretreatment Effluent Standards")

All certification actions are contingent on:

- The discharge being limited and all proposed mitigation being completed in strict compliance with the **applicant's project description** and the attached Project Information Sheet, and
- Compliance with all applicable requirements of the Basin Plan

# Types of 401 Certs

- Standard
  - Project Includes Adequate Conditions
- Technically Conditioned
  - Water Board Adds Conditions
- Low-Threat
  - Fee Calculator: Low-Impact Discharge
  - Total disturbance less than 0.1 acres, 250 linear feet, and 25 cubic yards of fill or excavation
  - RB3 developed a shorter format



# General & Individual 401 Certs

- State Board 401 Certs: mostly General & for Corps Regional General Permits (RGP)
- State Board must Certify projects that:
  - Require a water rights permit,
  - Take place within two or more Regions, and/or
  - Require a license from the Federal Energy Regulatory Commission (FERC)
  - Have similar discharges/mitigation.
- Emergency Certifications
- Corps Nationwide Permits
- 401 Certs for Classes of Activities

<b>Applicant</b>	<b>Subject</b>
USEPA Region 9	Vessel General Permit (VGP), Modification of the State Board's December 17, 2008 Clean Water Act Section 401 Water Quality Certification Order
USCOE Los Angeles District	RGP 41 for Removal of Invasive, Exotic Plants
USCOE Los Angeles District	RGP 63 for Repair and Protection Activities in Emergency Situations
USCOE Los Angeles District	RGP 67, Beach Nourishment in Southern California (BEACON?)
USCOE Sacramento District	RGP 60, Repair & Protection Activities in Emergency Situations
USCOE San Francisco District	RGP 5, Repair & Protection Activities in Emergency Situations
USCOE HQ	Nationwide Permits 1, 4, 5, 6, 9, 10, 11, 20, 22, 24, 28, 32, <u>34</u> , 38
BEACON	Order for Water Quality Certification: Beach Erosion Authority for Clean Oceans and Nourishment South Central Coast Enhancement Program (U.S. Army Corps of Engineers File No. 200100033-AJS)
CA State Lands Commission	Santa Barbara Channel Hazards. Order for Conditional Water Quality Certification: California State Lands Commission Santa Barbara Channel Hazards Removal Program.
CA Dept. of Fish & Game:	Order for Conditional Water Quality Certification: DFG, 2008 Fisheries Restoration Grant Program

# State General Certs and WDRs

- General 401 Water Quality Certification Order For Small Habitat Restoration Projects
- Statewide General WDR for Dredge or Fill Discharges to Waters Deemed Corps to be Outside Federal Jurisdiction
- Statewide General WDR for Dredged or Fill Discharges that have Received 401 Certification



# Region 3 Programmatic 401 Certifications

- Standard Cert for Morro Bay Partners in Restoration Permit Coordination Program
- 5-Year Debris Basin Maintenance Project, Santa Barbara County
- Santa Barbara County Flood Control Annual Maintenance
- Salinas River Channel Maintenance
- Carmel River Restoration and Maintenance
- Salinas Valley Water Project
- Santa Clara Valley Water District WDR/401

# 401 Cert Application Review

## Statutory Timelines:

- Post Public Notice for 21 days
- Notify applicant of Complete Application within 30 days
- Certification Action within 60 days, unless Corps agrees to longer

# Complete Application

Title 23, Chapter 28 of the CCR says a complete application is one that includes:

- Complete application form
- Copies of permit applications from state, local, and federal agencies
- Proof of CEQA compliance
- Check for \$640
- A technical project description
- Applicant contact information



# Interaction with Applicant and Agencies with Jurisdiction

- The standard for a complete application is low.
- Request additional information as soon as you determine you need it
- You must have a basis for certification and the conditions
- Establish a paper trail
- If applicant does not provide info, request that the applicant withdraw from the review process in writing
- A project applicant has a year to re-start the clock; no additional fee

# The Back and Forth

- Water Board needs indication that use of rip rap (channel hardening) is avoided/minimized
- County provides letter explaining approach
- Subsequent applications including rock have better context for Water Board reviewer

# **Water Board Actions:**

- ✓ **CWA Section 401 Water Quality Certification**
- ✓ **Denial of Certification**
- ✓ **Denial of Certification Without Prejudice**

## **Who Decides?**

- **WB Executive Officer**
- **Water Board Hearing**

# Dredging

“One man’s dredging is another man’s fill”

- Dredging without a discharge: Scoop and Lift clearing of Agricultural Ditches = No 401 Cert
- Dredging Flood Control Channels = Cert
- Dredging Harbors and Maritime Facilities = Cert or WDR
- Sediment Chemistry in Harbors
- Disposal Options – Another Layer, USEPA



# CEQA

- CEQA Applies to All Certification Actions
- No Finding? Denial Without Prejudice or Request for Withdrawal
- We must ensure all aspects of water quality impacts of project are addressed to satisfaction. If not, we have obligation to not concur with Findings
- CEQA aids your evaluation.

# Federal Lands in Region 3

- Fort Hunter-Ligget
- Los Padres National Forest
- NEPA/CEQA Concurrent Process!

# Enforcement

- State Authority Clear, but enforcement under Water Code, in absence of permit, challenging:
  - Pierson-Kelligian
- Federal Authority & Enforcement Clear
  - Madonna off LOVR
- Parallel Enforcement (WB-Other Agencies)
  - Less Common : Tract 1990
  - Refer case to District Attorney
- Strong Preference to get Compliance without Enforcement Action (Progressive Enforcement)

It's a Wrap!